

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

**YVONNE RICH, FREDERICK SCOTT, and
KATHLEEN WIKSTROM**
(each individually and as Representatives of all
similarly situated voter-citizens of the State of Arkansas)

PLAINTIFFS

V. NO. CV _____

**MARK MARTIN, Secretary of State of the State
of Arkansas, in his official capacity only**

DEFENDANT

**COMPLAINT FOR INJUNCTIVE RELIEF AND PETITION FOR
WRIT OF MANDAMUS AGAINST THE SECRETARY OF STATE**

COME NOW the Plaintiffs, Yvonne Rich, Frederick Scott, and Kathleen Wikstrom each individually and as Representatives of all similarly situated voter-citizens of the State of Arkansas, pursuant to the provisions of Ark. Code Ann. § 16-13-201 and 16-115-102, and seek the entry of an Order by this Circuit Court which:

- (1) Enjoins the Secretary of State from certifying Issue No. 3, a proposed amendment to the Arkansas Constitution, HJR 1009 of 2013, referred by the 89th Arkansas General Assembly, for placement upon the ballot to be used by the various County Election Commissions throughout the State of Arkansas at the General Election to be held in the State of Arkansas on November 4, 2014, as the proposed amendment and subsequent publication by the Secretary of State constitute a manifest fraud upon the voter-citizens of the State of Arkansas, for the reasons set forth in this Complaint; and
- (2) Enjoins the Secretary of State from canvassing, counting, or certifying any votes cast at the November 4, 2014 General Election in the State of Arkansas as Issue No. 3, a proposed amendment to the Arkansas Constitution, HJR 1009 of 2013, referred by the 89th Arkansas General Assembly for placement upon the ballot at the General Election, and its subsequent publication, constitute a manifest fraud upon the voter-citizens of the State of Arkansas, for the reasons set forth in this Complaint.

I. PARTIES

1. Yvonne Rich is an individual and qualified voter-citizen of the State of Arkansas and a resident of Mountain Home, Baxter County, Arkansas.

2. Frederick Scott is an individual and qualified voter-citizen of the State of Arkansas and a resident of Maumelle, Pulaski County, Arkansas.

3. Kathleen Wikstrom is an individual and qualified voter-citizen of the State of Arkansas and a resident of Benton, Saline County, Arkansas.

4. Defendant Mark Martin is the duly elected Secretary of State of the State of Arkansas, who is charged with the certification, notice and publication, and transmission of proposed constitutional amendments that have been referred by the General Assembly for inclusion on the ballot and consideration by the voter-citizens of the State of Arkansas at the November 4, 2014 General Election to be held throughout the State of Arkansas.

II. JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to Ark. Code Ann. §16-13-201 and 16-115-102.

6. The Court has personal jurisdiction over the parties, and venue is proper in Pulaski County pursuant to Ark. Code Ann. § 16-60-103(3).

III. FACTUAL ALLEGATIONS

7. During the regular session of the 89th Arkansas General Assembly, which convened on Monday, January 14, 2013, three proposed amendments to the Arkansas Constitution were introduced. These three amendments were referred pursuant to Article 19, Section 22 of the Arkansas Constitution to be voted upon by the voter-citizens of the State of Arkansas during the General Election on November 4, 2014.

8. The first proposed amendment to the Arkansas Constitution was proposed by Senator Dismang and filed as SJR 7. The proposed amendment's popular name is: "An Amendment Empowering the General Assembly to Provide for Legislative Committee Review and Approval of State Agencies' Administrative Rules," and the amendment was numbered as Issue No. 1 by the Arkansas Secretary of State. A true and correct copy of the published version of "Issue No. 1" (SJR 7) is attached hereto as Exhibit "A" and incorporated herein by reference as if set forth word for word.

9. The second proposed amendment to the Arkansas Constitution was proposed by Senator Sample and filed as SJR 16. The proposed amendment's popular name is: "An Amendment Allowing More Time to Gather Signatures on a State-Wide Initiative or Referendum Petition Only if the Petition as Originally Filed Contained at Least 75% of the Valid Signatures Required," and the amendment was numbered as Issue No. 2 by the Arkansas Secretary of State. A true and correct copy of the published version of "Issue No. 2" (SJR 16) is attached hereto as Exhibit "B" and incorporated herein by reference as if set forth word for word.

10. The third and final proposed amendment to the Arkansas Constitution was proposed by Representative Sabin and filed as HJR 1009. The proposed amendment's popular name is: "An Amendment Regulating Contributions to Candidates for State or Local Office, Barring Gifts from Lobbyists to Certain State Officials, and Setting Term Limits for Members of the General Assembly," and the amendment was numbered as Issue No. 3 by the Arkansas Secretary of State. A true and correct copy of the published version of "Issue No. 3" (HJR 1009) is attached hereto as Exhibit "C" and incorporated herein by reference as if set forth word for word.

11. Also attached to the Complaint as Exhibit “D” is a true and correct copy of Issue No. 3, HJR 1009, as originally introduced by Representative Sabin in the Arkansas House of Representatives on February 13, 2013.

12. Also attached to this Complaint as Exhibit “E” is a true and correct copy of Issue No. 3, HJR 1009, as amended and engrossed on March 15, 2013.

13. Also attached to this Complaint as Exhibit “F” is a true and correct copy of Issue No. 3, HJR 1009, as amended and engrossed on April 3, 2013.

14. Also attached to this Complaint as Exhibit “G” is a true and correct copy of Issue No. 3, HJR 1009, as amended and engrossed on April 6, 2013.

15. Also attached to this Complaint as Exhibit “H” is a true and correct copy of Issue No. 3, HJR 1009, as amended and engrossed on April 18, 2013.

16. Also attached to this Complaint as Exhibit “I” is a true and correct copy of Issue No. 3, HJR 1009, as correctly enrolled and ordered transmitted to the Governor’s Office on April 19, 2013.

17. Attached to this Complaint as Exhibit “J” is a true and correct copy of the Bill Status History for Issue No. 3, HJR 1009, which contains the complete record of the introduction and status of HJR 1009.

18. Attached hereto as Exhibit “K” is a true and correct copy of the voting record in the Arkansas House of Representatives regarding the passage of HJR 1009 with a “yea” vote of 71 and a “nay” vote of 12 on April 9, 2013.

19. Attached hereto as Exhibit “L” is a true and correct copy of the voting record in the Arkansas Senate regarding the concurrence in HJR 1009 with a “yea” vote of 23 and a “nay” vote of 4 on April 18, 2013.

20. Attached hereto as Exhibit “M” is a true and correct copy of the voting record in the Arkansas House of Representatives regarding the passage of HJR 1009 as amended with a “yea” vote of 76 and a “nay” vote of “3” on April 19, 2013.

21. Attached hereto collectively as Exhibit “N” are true and correct copies of Arkansas Attorney General Opinion No. 2013-067 and Opinion No. 2013-069 dated December 23, 2013, from Attorney General Dustin McDaniel to Secretary of State Mark Martin in which Attorney General McDaniel opined that pursuant to Ark. Code Ann. § 7-9-110 the Attorney General is no longer authorized to fix and declare a popular name for constitutional amendments proposed by the General Assembly pursuant to Ark. Const. Art. 19, § 22. The Attorney General further opined that it is his opinion that, in regards to Issue No. 3, HJR 1009, the Secretary of State may supply a popular name. Attached hereto as Exhibit “O” is a true and correct copy of Act 2013, No. 1413, which amended Ark. Code Ann. § 7-9-110.

22. Attached hereto collectively as Exhibit “P” are true and correct copies of Senate Concurrent Resolution 1 and House Resolution 1013, each introduced during the fiscal session of the 89th General Assembly, and each of which purport to authorize or support the popular names selected by the Secretary of State for the proposed amendments to the Arkansas Constitution referred to the people and voter-citizens of the State of Arkansas during the 2013 Regular Session.

23. Following that opinion, the Secretary of State prepared a notice of the proposed amendment to the Constitution of Arkansas, Issue No. 3, HJR 1009, dated April 24, 2012, in which he fixed the popular name of Issue No. 3, HJR 1009 to be:

Issue No. 3
Popular Name

An Amendment Regulating Contributions to Candidates for State or Local Office, Barring Gifts From Lobbyists to Certain State Officials, Providing for Setting Salaries of Certain State Officials, and Setting Term Limits for Members of the General Assembly.

24. Ark. Code Ann. § 7-9-113 requires that the Secretary of State publish notice of any proposed amendment to the Arkansas Constitution that has been referred to the Secretary of State by the Arkansas General Assembly. Attached to this Complaint as Exhibit “C” is a true and correct copy of a Notice published by the Secretary of State in the May 2, 2014 edition of the Arkansas Democrat Gazette newspaper. Issue No. 3, HJR 1009 is printed on pages 10A and 11A of the paper.

IV. CAUSES OF ACTION

COUNT I

THE COURT SHOULD STRIKE ISSUE NO. 3 FROM THE BALLOT AS THE TITLE FAILS TO INFORM VOTERS THAT THE AMENDMENT WOULD LENGTHEN TERM LIMITS WHICH IS MANIFESTLY FRAUDULENT AS TO THE GENERAL PUBLIC

25. The Plaintiffs re-allege and incorporate by reference paragraphs 1-24 above.

26. Members of the Arkansas House of Representatives are currently limited to no more than three two year terms, for a total of six years of service, under Section 2(a) of Amendment 73 of the Arkansas Constitution.

27. Members of the Arkansas Senate are similarly limited to no more than two four year terms, for a total of eight years of service, under Section 2(b) of Amendment 73 of the Arkansas Constitution.

28. Issue No 3, HJR 1009 would remove those limits from Amendment 73 and replace them with the following language:

- (c)(1) A member of the Arkansas General Assembly shall serve no more than sixteen (16) years, whether consecutive or nonconsecutive.
- (2) A member who completes his or her sixteenth year of service during a term of office for which he or she has been elected may serve until the completion of that term of office.
- (3) The years of service in both the Senate and the House of Representatives shall be added together and included to determine the total number of years in office.

The proposed amendment would double term limits for members of the Arkansas Senate, and nearly triple term limits for members of the Arkansas House of Representatives. In addition, proposed Section 2(c)(4) would carve out an exception for partial legislative terms served as a result of a special election, and two year terms served as a result of Senate apportionments, providing that those years of service would not be included in the expanded sixteen year term limits.

29. Ark. Code Ann. § 7-9-204, amended in 2013, provides that the General Assembly may designate in the joint resolution proposing an amendment to the Arkansas Constitution the popular name and ballot title of the amendment for the election ballot.

30. The General Assembly, in HJR 1009, did not designate a popular name or ballot title for Issue No. 3. Instead, at a January 23, 2014 meeting of the House Committee on State Agencies and Governmental Affairs and Senate Committee on State Agencies and Governmental Affairs, the Secretary of State “stated his plan of action for the ballot titles and popular names of the three (3) proposed constitutional amendments referred to the people of Arkansas by the General Assembly at its 2013 regular session,” which was to “use the title of the respective joint resolution as the ballot title” and to “use a popular name provided by the Attorney General for that purpose.” See Exhibit “P,” Senate Concurrent Resolution 1 and House Joint Resolution 1013.

31. The title of Issue No. 3 is the same as the title of HJR 1009. Upon information and belief, the Attorney General declined to provide a popular name for Issue No. 3. See Exhibit “O.”

Upon information and belief, the popular name for Issue No. 3 was supplied by the Arkansas Secretary of State.

32. Neither the popular name nor the ballot title for Issue No. 3 informs the voter-citizens of the State of Arkansas that approval of the amendment would lengthen term limits for members of both the Arkansas Senate and the Arkansas House of Representatives. The ballot title's last clause advises the general public that one of the amendment's purposes is "establishing term limits for members of the general assembly." The popular name is equally misleading, stating only that the purpose of the amendment is "setting term limits for Members of the General Assembly."

33. The use of the word "setting" implies to the general public that there are no term limits currently in place and that the amendment would set or establish term limits for Members of the General Assembly. Voter-citizens who are in favor of term limits may vote "yea" on Issue No. 3, believing that they are approving an amendment which establishes term limits. Likewise, voter-citizens who are not in favor of term limits may vote against Issue No. 3, believing they are voting against an amendment which establishes term limits. For those voter-citizens who are aware of the current term limits, the use of the word "setting" implies that the term limits will be fixed or limited. Neither the popular name nor the ballot title in any way imply that the amendment seeks to lengthen term limits for members of the Arkansas Senate and House of Representatives.

34. A more burdensome standard of review must be imposed when the constitutional amendment proposed by the General Assembly deals with the General Assembly. Where a proposed amendment would benefit the members of the General Assembly, the amendment must be transparent, not co-mingled in an ethics bill with a title which is vague at best. Plaintiffs respectfully suggest that the general standard of "manifest fraud" must be even more carefully and

aggressively applied and with scrutiny when legislation prepared by the legislature would benefit the legislature itself.

35. Issue No. 3 perpetrates a manifest fraud on the general public and voter-citizens of the State of Arkansas and the Plaintiffs respectfully request that Issue No. 3 be ordered stricken by this Court from the ballot to be used at the General Election on November 4, 2014. The Plaintiffs seek an Order from this Court which (1) enjoins the Secretary of State from certifying Issue No. 3 for placement upon the ballot to be used in the November 4, 2014 General Election, and (2) enjoins the Secretary of State from canvassing, counting or certifying any votes cast on Issue No. 3 at the November 4, 2014 General Election in the State of Arkansas.

COUNT II

THE COURT SHOULD STRIKE ISSUE NO. 3 FROM THE BALLOT AS NO MORE THAN THREE AMENDMENTS MAY BE PROPOSED AT THE SAME TIME

36. The Plaintiffs re-allege and incorporate by reference paragraphs 1-35 above.

37. Ark. Const. Art. 19, § 22 mandates that “no more than three [constitutional] amendments shall be proposed or submitted at the same time.” The Plaintiffs do not take issue with Issue No. 1 or Issue No. 2, which each contain a separate proposed constitutional amendment, but contend that the submission of Issue No. 3 is unconstitutional in that it attempts to introduce two separate and distinct matters as one proposed constitutional amendment.

38. The popular name for Issue No. 3 reveals those two separate and distinct issues: (1) *Ethics*: the regulation of contributions to candidates for state or local office, the bar of gifts from lobbyists to certain state officials, and the setting of salaries of certain state officials; and (2) *the setting of term limits for members of the General Assembly*.

39. More specifically, the ballot title for Issue No. 3 reveals that the passing of Issue No. 3 would (a) prohibit members of the general assembly and elected constitutional officers of the executive department from accepting gifts from lobbyists and (b) define key terms relating to that prohibition, which regulate ethics for Arkansas elected officials

40. The passing of Issue No. 3 would then (a) prohibit members of the general assembly from setting their own salaries and the salaries of elected constitutional officers of the executive department, justices, and judges; (b) establish a seven-member independent citizens commission to set salaries for members of the general assembly, elected constitutional officers of the executive department, justices, and judges; (c) establish the appointment process for members of the independent citizens commissions; and (d) prohibit members of the independent citizens commission from accepting gifts from lobbyists, which regulate ethics for Arkansas elected officials.

41. The passing of Issue No. 3 would also prohibit certain contributions, including contributions by corporations, to candidates for public office, which also regulates ethics for Arkansas elected officials.

42. The passing of Issue No. 3 would also prohibit a member of the General Assembly from registering as a lobbyist until two (2) years after the expiration of his or her term, which also regulates ethics for Arkansas elected officials.

43. Finally, the passing of Issue No 3 would lengthen term limits for members of the General Assembly, which does not tie-in to the umbrella of regulating ethics for Arkansas elected officials.

44. Issue No. 3 is an unconstitutional compilation of two (2) separate and distinct proposals for amending the Arkansas Constitution, which, as it currently stands, will be included

on the General Election ballot with two other proposals, Issue No. 1 and Issue No. 2. Ark. Const. Art. 19, § 22 directs that referred constitutional amendments are to be “submitted so as to enable the electors to vote on each amendment separately.”

45. Notwithstanding the clear mandate of Art. 19, § 22, Issue No. 3 presents two referred constitutional amendments in one proposal. These amendments were required to be submitted as separate enumerated issues so as to allow the voter-citizens to vote on each amendment separately. Issue No. 3 perpetrates a manifest fraud upon the general public by the referral of HJR 1009, so that four (4), rather than three (3), constitutional amendments would be referred for a vote of the voter-citizens of the State of Arkansas at the General Election on November 4, 2014.

46. Issue No. 3 represents a clear attempt to circumvent the three (3) amendment limit mandated by Article 19, § 22 by combining two (2) separate and distinct issues into one proposed amendment. The result is unconstitutional and cannot be permitted to appear on the general election ballot. Each constitutional amendment must present a single subject, so that in total there are only three proposed constitutional amendments, each with a single subject. When amendments contain one single subject, voter-citizens are not faced with the dilemma of taking a provision they dislike in order to approve an amendment they favor.

47. The combination of the two particular issues in Issue No. 3, as identified above, further perpetuates the manifest fraud outlined in Count I. By preceding the final issue, “setting” term limits, with a proposed amendment which assures ethical dealings and transparency by Arkansas elected officials, the voter-citizens of Arkansas are misled into believing that both of the issues contained in Issue No. 3 relate to ethics and transparency. In fact, the very first section of Issue No. 3 provides that “this amendment shall be known and may be cited as “The Arkansas

Elected Officials Ethics, Transparency, and Financial Reform Amendment of 2014.” The subtitle of HJR 1009 itself suggests that two unrelated issues were combined into one proposed amendment, in that the all-encompassing subtitle fails to indicate the auxiliary issue, the “setting” of term limits.

48. Issue No. 3 perpetrate a manifest fraud upon the general public by the referral of HJR 1009, so that four (4), rather than three (3), constitutional amendments would be referred for a vote of the voter-citizens of the State of Arkansas at the General Election on November 4, 2014.

49. Issue No. 3 perpetrates a manifest fraud on the general public and voter-citizens of the State of Arkansas and the Plaintiffs respectfully request that Issue No. 3 be ordered stricken by this Court from the ballot to be used at the General Election on November 4, 2014. The Plaintiffs seek an Order from this Court which (1) enjoins the Secretary of State from certifying Issue No. 3 for placement upon the ballot to be used in the November 4, 2014 General Election, and (2) enjoins the Secretary of State from canvassing, counting or certifying any votes cast on Issue No. 3 at the November 4, 2014 General Election in the State of Arkansas.

COUNT III

ALTERNATIVELY, THE COURT SHOULD STRIKE SECTION 3 OF ISSUE 3

50. The Plaintiffs re-allege and incorporate by reference paragraphs 1-49 above.

51. By design, HJR 1009 contained a Severability Clause in Section 17. The severability clause provides:

In the event any section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase or word of this amendment is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of this amendment, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this amendment.

Issue No. 3, § 17. The inclusion of a severability clause suggests that the constitutionality of Issue No. 3 was in question even prior to publication. Section 3 of Issue No. 3, which lengthens term limits for members of the General Assembly, constitutes a manifest fraud upon the voter-citizens of the State of Arkansas and cannot be included on the ballot to be used at the General Election on November 4, 2014. Should the Court decide not to strike the entirety of Issue No. 3, the Plaintiffs respectfully request that Section 3 of Issue No. 3 be stricken. The remainder of Issue No. 3 could then be permitted to stand and only three constitutional amendments would be presented for a vote on November 4, 2014.

WHEREFORE, Plaintiffs, individually and on behalf of all other similarly situated voter-citizens of the State of Arkansas, pray that the Circuit Court will order that Issue No. 3, referred by the General Assembly as a proposed amendment to the Arkansas Constitution, be stricken from the ballot to be used at the General Election on November 4, 2014, and further, that the Secretary of State be ordered not to canvass, count or certify any votes that may be cast at such General Election on Issue No. 3, for the reasons set forth in this Complaint; alternatively, that the Court will order that Section 3 of Issue No. 3 be stricken from the ballot; and for any and all just and proper relief to which they may be entitled.

Respectfully submitted,

EICHENBAUM LILES P.A.
124 West Capitol Avenue, Suite 1900
Little Rock, AR 72201-3717
Ph: 501-376-4531 – Fax: 501-376-8433

By: 

Alicia Austin Smith, ABN 2010160
Attorneys for the Plaintiffs